

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION

In re:)	
)	Chapter 11
NATIONAL STEEL CORPORATION,)	
et al.,)	Case No.02-08705
)	(Jointly Administered)
)	
Debtors.)	Judge John H. Squires
)	

**PROOF OF CLAIM OF THE UNITED STATES ON BEHALF OF
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AGAINST MIDWEST STEEL CORPORATION**

1. The United States files this Proof of Claim at the request of the U.S. Environmental Protection Agency ("EPA"). The Attorney General is authorized to make this Proof of Claim on behalf of the United States. This Proof of Claim asserts claims against the Midwest Steel Corporation (referred to herein as "Debtor") for:
 - (a) the recovery of civil penalties for pre-petition violations of the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, and regulations promulgated thereunder, at the Debtor's Midwest facility in Portage, Indiana.
 - (b) the recovery of civil penalties for pre-petition violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992K, and regulations promulgated thereunder, at the Debtor's Midwest facility in Portage, Indiana.

TOXIC SUBSTANCES CONTROL ACT PENALTY CLAIMS

2. Since at least 2001, Debtor has improperly disposed of liquids containing PCBs in the electrical basement in the Midwest facility. This improper disposal is a violation of 40 C.F.R. § 761.60. Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day per violation pursuant to 15 U.S.C. § 2615 and 40 C.F.R. § 19.4.

3. Since at least 2001, Debtor has violated the regulations regarding the labeling and dating of PCB-containing wastes at the Midwest facility on approximately three occasions. The failures to properly label and date PCB containing wastes are violations of 40 C.F.R. § 761.40. Accordingly, Debtor is liable for civil penalties of up to \$27,500 per day per violation pursuant to 15 U.S.C. § 2615 and 40 C.F.R. § 19.4.

4. The United States hereby asserts a claim against Debtor for civil penalties for the pre-petition violations of the Toxic Substances Control Act described in paragraphs 2-3 above, for an amount to be determined by a court or administrative agency with jurisdiction.

RESOURCE CONSERVATION AND RECOVERY ACT PENALTY CLAIMS

5. Debtor is liable to the United States for civil penalties for pre-petition violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901-6992k, and regulations promulgated thereunder at the Midwest facility in Portage, Indiana. RCRA provides for civil penalties of up to \$27,500 per day of violation occurring on or after January 31, 1997 pursuant to 42 U.S.C. § 3008(g) and 40 C.F.R. § 19.4.

6. Debtor is, and was at the time of the violations, the "owner" and "operator" of the Midwest facility within the meaning of RCRA and the governing regulations. At all times

relevant to the allegations, "hazardous waste" was "generated" and "stored" at the Midwest facility within the meaning of RCRA and the governing regulations. This facility is, and was at the time of the violations alleged, a hazardous waste treatment, storage, management and/or disposal "facility," within the meaning of RCRA and the governing regulations.

7. Between approximately November 1, 2001 and February 15, 2002, Debtor's Midwest facility failed to comply with its hazardous waste management permit by improperly disposing of F006 hazardous wastes containing leachable nickel in excess of 11 mg/l, in violation of the land disposal restrictions found at 40 C.F.R. Part 268 and Ind. Admin. Code tit. 329 § 3.1-12-1. Therefore, Debtor is liable for civil penalties pursuant to 42 U.S.C. § 3008(g) and 40 C.F.R. § 19.4.

8. The United States hereby asserts a claim against Debtor for civil penalties for the pre-petition violations of RCRA described in paragraph 7 above, for an amount to be determined by a court or administrative agency with jurisdiction.

INJUNCTIVE OBLIGATIONS UNDER ENVIRONMENTAL STATUTES

9. Debtor has injunctive obligations under environmental laws, including but not limited to obligations under the Clean Air Act, RCRA, Clean Water Act, EPCRA, CERCLA, and the Toxic Substances Control Act at its facilities.

10. It is the United States' position that it is not required to file a proof of claim with respect to Debtor's injunctive obligations to comply with work requirements under Consent Decrees and Court Orders and to comply with other environmental requirements imposed by law. Debtor and any reorganized debtor(s) must comply with the mandatory injunctive requirements of those Consent Decrees and Court Orders and must comply with other environmental

requirements imposed by law.

11. Court-ordered and regulatory obligations are mandatory injunctive obligations with which Debtor must comply, and for which proofs of claim need not be filed under the Bankruptcy Code. Nevertheless, this claim is filed in a protective fashion only to protect the United States' rights with respect to such obligations of the Debtor. The United States reserves the right to take future actions to enforce any such obligations of the Debtor. Nothing in this Proof of Claim constitutes a waiver of any rights of the United States or an election of remedies.

ADDITIONAL TERMS

12. This claim reflects the known liability of the Debtor to the United States on behalf of EPA. The United States reserves the right to amend this claim to assert subsequently discovered liabilities. This proof of claim is without prejudice to any right under 11 U.S.C. § 553 to set off, against this claim, debts owed (if any) to the debtor by this or any other federal agency.

13. The United States has not perfected any security interest on its claim against the debtor.

14. This claim is filed as a general unsecured claim except to the extent of any secured/trust interest in insurance proceeds received by the Debtor on account of environmental claims of the United States, and to the extent the United States is entitled to administrative expense priority for post-petition penalties. The United States will file any application for administrative expense priority at the appropriate time. See also paragraphs 9-11 *supra*.

15. Except as expressly stated in this Proof of Claim, no judgments against the Debtor

have been rendered on this Proof of Claim.

16. Except as expressly stated in this Proof of Claim, the Debtor has not made any payments to the United States on these claims.

17. This Proof of Claim is also filed to the extent necessary to protect the United States' rights relating to any insurance proceeds received by the Debtor relating to any of the sites discussed herein.

Respectfully submitted,

W. BENJAMIN FISHEROW
Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

SARAH HIMMELHOCH *Sarah Himmelhoch*
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
(202) 514-0180

PATRICK J. FITZGERALD
United States Attorney
Northern District of Illinois

JOEL NATHAN
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604
(312) 353-5300